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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,293	05/17/2005	Cornelis Versluijs	NL 021209	5984

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

CARTER, WILLIAM JOSEPH

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

A

Office Action Summary	Application No. 10/535,293	Applicant(s) VERSLUIJS ET AL.	
	Examiner William J. Carter	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-²~~3~~, 6, and ⁷~~11~~ are rejected under 35 U.S.C. 102(b) as being anticipated by Maassen et al. (EP 0 336 478 A1).

With respect to claim 1, Maassen teaches a lighting unit (Fig. 1) provided with a concave reflector (1) having an axis of symmetry (2) with a light emission window (4) bounded by an edge of the reflector (3) that is transverse to the axis (Fig. 1), an elongate body (22) arranged substantially axially on the axis of symmetry (Fig. 1) and accommodated in a holder (6) opposite the light emission window, an axially positioned cap (10) serving as an optical screening means which surrounds the light source at least partly so as to intercept unreflected light rays (Fig. 1), characterized in that the light source is surrounded by a sleeve (10 and 24) having an end facing light emission window, and the cap is positioned over the sleeve adjacent the end by means of a locking element (page 3, lines 32-33; a locking element can be anything that keeps it in place; and if the Applicant wanted the sleeve, cap and locking element to be the elements, it should be distinctly claimed as in claim 10) provided at the sleeve (Fig. 1).

As for claim 2, Maassen teaches the cap (10) is provided with a screening ring (top edge of 10) which is impermeable to light and which extends transversely (Fig. 1) the axis of symmetry (2).

As for claim 6, Maassen teaches the reflector (1) and the light source are indetachably integrated into a lamp (Fig. 1).

As for claim 7, Maassen teaches the holder (6) is provided with a locking mechanism (mechanism that holds the light source and sleeve in the holder in Fig. 1) adjacent a connection to the light source (22) and the sleeve (10 and 24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maassen.

With respect to claims 10 and 12, Maassen discloses the claimed invention, as discussed above, except for the locking element is a mechanical piece distinct from the cap. It would have been obvious to one of ordinary skill in the art, at the time of the invention to make the cap and locking elements distinct from each other, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nervin v. Erlichman*, 168 USPQ 177, 179. As for claim 12,

Maassen teaches all of the claimed elements, which are assembled as claimed, thus the method is inherently taught.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maassen in view of Scott et al. (2,277,563).

With respect to claims 4 and 5, Maassen teaches all of the claimed elements, as discussed above, except for explicitly teaching the sleeve is provided with an outer surface in which at least one recess is present into which a portion of the locking element grips by partly mating into the at least one recess and at the same time lies enclosed with another portion in a mating locking holder of the cap. Scott, also drawn to masked lighting, teaches a sleeve (19; metal cup or thimble is clearly a sleeve around the glass of the bulb and opening 18; page 2, column 1, lines 1-10) provided with an outer surface in which at least one recess (18) is present into which a portion (16) of the locking element (16, 17, and 30; these elements lock the cap into the bulb; "support structure" when welded to lock an element into place, as is the case here, is a locking element) grips by partly mating into the at least one recess (Fig. 2; 16 and 17 are mating with recess 18 in Fig. 2 when they are inserted into the recess) and at the same time lies enclosed with another portion in a mating locking (Fig. 3; the cap is mating with the locking portion in Fig. 3 when the cap 27 is fused with the locking element 16, 17, and 30) holder of a cap (27). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the locking element of Scott in the light of Maassen, in order to support the light shield/cap (page 2, column 2, lines 64-67).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maassen in view of Zhao et al. (6,382,816).

With respect to claim 6, Maassen teaches all of the claimed elements, as discussed above, except for explicitly teaching the lamp is a metal halide lamp with a ceramic discharge vessel. Zhao, also drawn to lighting with reflectors, teaches a lamp is a metal halide lamp with a ceramic discharge vessel (column 7, lines 52-53). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the lamp of Zhao in the light of Maassen, in order to utilize a light source (column 7, lines 50-53).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maassen in view of Ooms (5,506,464).

With respect to claim 9, Maassen teaches all of the claimed elements, as discussed above, except for explicitly teaching a ceramic lamp base which is connected to the assembly of the reflector and light source by means of cement, and in that the cement forms an interlocking fixture. Ooms, also drawn to reflecting light fixtures, teaches a ceramic lamp base (20) which is connected to an assembly of a reflector (1) and light source (10) by means of cement (29), and in that the cement forms an interlocking fixture (Fig. 1). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the lamp base and connection technique of Ooms in the light of Maassen, in order to fix the components of the light fixture together (Fig. 1).

Double Patenting

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 6, and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 6, and 8 of copending Application No. 10/510,310 in view of Scott. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending Application No. 10/535293 also teaches the metal halide lamp with a ceramic discharge vessel that is indetachably integrated with the reflector into a lamp, with the same orientation, and the same optical screen cap that is provided with the same edge/screening ring. A locking element is not explicitly cited in the claims, but Scott teaches a locking element (16, 17, and 30).). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the locking element of Scott in

the light of the copending Application No. 10/510,310, in order to support the light shield/cap (page 2, column 2, lines 64-67).

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

Claim 3 is allowed.

Response to Arguments

Applicant's arguments filed 30 August 2006 have been fully considered but they are not persuasive. As cited in the original office action, Maassen teaches the cap as a locking element. In new claim 10, the Applicant does explicitly claim that the cap and locking element are distinct elements, but making a formerly integral structure in various elements involves only routine skill in the art (Nervin v. Erlichman). Therefore it is explicitly shown that Maassen teaches the elements of claims 1 and 10. The locking and mating elements of Scott are described more decrepitly above. Also the Examiner does not concede that the co-pending application lacks a locking element and that the sleeve and cap are in fact formed into an integral unit. Rather the Examiner has conceded that the co-pending application's claims lack a locking element and that the sleeve and cap are in fact formed into an integral unit.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Carter whose telephone number is (571)272-0959. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea can be reached on (571)272-2378. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ALI ALAVI
PRIMARY EXAMINER

wjc
10/30/06